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Attorney for Plaintiff
 INNOVATE CALGARY,
 f/k/a UNIVERSITY TECHNOLOGIES INTERNATIONAL INC.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

INNOVATE CALGARY,)	Case No.
f/k/a UNIVERSITY TECHNOLOGIES)	
INTERNATIONAL INC., a foreign)	
corporation,)	COMPLAINT
)	
Plaintiff,)	DEMAND FOR JURY TRIAL
)	
v.)	
)	
METACURE N.V., a foreign corporation,)	
)	
Defendant.)	

Plaintiff, Innovate Calgary, f/k/a University Technologies International Inc. (“UTI”), alleges by way of complaint against Defendant, MetaCure N.V. (“MetaCure”), (collectively, “the Parties”) as follows:

I. Factual Background

A. The Parties

1. Innovate Calgary is a full service organization responsible for the University of Calgary’s technology transfer and business development. Innovate Calgary works to help researchers at the University of Calgary bridge the gap between discovery and innovation. Innovate Calgary

1 facilitates the transfer of innovation to market thereby diversifying the economy, providing
2 viable solutions to industry, stimulating economic growth and wealth creation, and providing
3 overall benefit to our community and society. Innovate Calgary's principal place of business is
4 3553 – 31 Street NW, Calgary, Alberta, T2L 2K7, Canada.

5
6 2. Innovate Calgary's predecessor-in-interest, UTI, was also responsible for
7 commercializing the scientific innovations of the University's researchers. UTI was established
8 June 1, 1989, by the University of Calgary and expanded to include other research groups and
9 corporations. In 2010, UTI combined with Calgary Technologies Inc. to form Innovate Calgary.

10 3. Innovate Calgary owns a portfolio of patents directed generally to electrically stimulate
11 the gastrointestinal tract to treat and prevent various gastro-intestinal inflections. The sole named
12 inventor of these patents is Dr. Martin Mintchev, a professor of Electrical and Computer
13 Engineering at the University of Calgary. He is also an adjunct professor of Medicine at the
14 University of Calgary and an adjunct professor of surgery at the University of Alberta.

15
16 4. Dr. Mintchev is also a Fellow of the American Institute of Medical and Biological
17 Engineering, a title conferred on those engineers who have demonstrated outstanding proficiency
18 and have achieved distinction in their profession. He is also a Senior Member of the Institute of
19 Electronic and Electrical Engineers, the world's largest professional association dedicated to
20 advancing technological innovation and excellence for the benefit of humanity.

21
22 5. Among his numerous awards, in 2002 the Institute for Information Theories and
23 Application ("ITHEA") awarded Dr. Mintchev the ITHEA Prize for Outstanding Achievements
24 in the Field of Information Theories and Applications, International Journal of Information
25 Theories and Applications. In 2001 he was named Honorary Professor of the International
26

1 Medical Association (Bulgaria). In 1999, Dr. Mintchev received the Faculty of Engineering
2 Research Award for his advances in Electrical and Computer Engineering.

3 6. MetaCure is a medical device company that develops and commercializes minimally
4 invasive treatment for diabetes, the combination of type 2 diabetes and obesity. MetaCure's
5 principal place of business is located at 6 Werfstraat, Curacao, Netherlands Antilles.
6

7 **B. The UTI-MetaCure Confidentiality and Non-Use Agreement**

8 7. In 2003, Dr. Mintchev and others published an article entitled "Hardware-software Co-
9 design of Portable Functional Gastrointestinal Stimulator System" in the *Journal of Medical*
10 *Engineering & Technology* that described, among other things, the application of
11 microprocessor-controlled electrical stimulation to restore impaired motility in the
12 gastrointestinal tract. See Martin P. Mintchev, *et al.*, *Hardware-software Co-design of Portable*
13 *Functional Gastrointestinal Stimulator System*, 27 J. Med. Eng'g & Tech. 164 (2003). Upon
14 information and belief, MetaCure first became aware of Dr. Mintchev's research in this area
15 upon the publication of this article.
16

17 8. Shortly thereafter, MetaCure wished to evaluate a possible collaborative research and
18 commercial relationship with UTI ("Evaluation"), which required the exchange of certain
19 confidential information related to the subject matter addressed in Dr. Mintchev's 2003 article.
20

21 9. On February 10, 2004, UTI and MetaCure entered into a Confidentiality and Non-Use
22 Agreement ("Agreement") under which MetaCure obtained access to UTI's confidential and/or
23 proprietary information, ideas, concepts, and technology in connection with gastrointestinal
24 stimulation methods and devices, including the provisional patent application titled "Method &
25 Implantable Device for Restoring Gastrointestinal Mobility, or for adversely Affecting
26

1 Spontaneously-Existing Gastrointestinal Mobility.” *See* Recitals to Agreement, attached hereto
 2 as Exhibit A.

3 10. Pursuant to the Agreement, MetaCure expressly agreed to hold UTI’s confidential
 4 information “in strict confidence, to exercise appropriate caution to maintain its secrecy and to
 5 prevent unauthorized use of such Information, . . . and not to disclose, discuss, communicate or
 6 transmit such Information to others, except only to those persons engaged by or working on
 7 behalf of the Receiving Party and necessary for the Evaluation.” Agreement ¶ 1.1. In addition,
 8 MetaCure expressly agreed to use UTI’s confidential information “solely for purposes of
 9 performing the Evaluation and for no other purpose.” *Id.* ¶ 1.2.
 10

11 11. According to the Agreement, these duties were effective and binding on MetaCure
 12 “during the Evaluation and . . . 5 years after the termination of the Evaluation or any resulting
 13 agreement.” *Id.* ¶ 7.
 14

15 **C. MetaCure’s Breach of the Agreement**

16 12. Instead of maintaining the subject matter in confidence, MetaCure breached the
 17 Agreement by directly incorporating aspects of UTI’s confidential information and technology
 18 into MetaCure’s commercial products. For example, MetaCure’s DIAMOND (TANTALUS)TM
 19 System incorporates gastric electrical stimulation technology based upon the confidential
 20 information that UTI disclosed to MetaCure during the Evaluation. *See, e.g.,* MetaCure Home
 21 Page, “Mechanism of Action,” [http://www.metacure.com/for-physicians-2/mechanism-of-](http://www.metacure.com/for-physicians-2/mechanism-of-action/)
 22 [action/](http://www.metacure.com/for-physicians-2/mechanism-of-action/).
 23

24 13. Thus, MetaCure breached the Agreement by, *inter alia*, (a) failing to maintain UTI’s
 25 confidential information in strict confidence; (b) disclosing UTI’s confidential information to
 26

persons not necessary for the Evaluation; and (c) using UTI's confidential information for purposes other than performing the Evaluation. *See* Agreement ¶¶ 1.1, 1.2.

14. Innovate Calgary learned of MetaCure's breach on or around December 2012, when Dr. Mintchev notified Innovate Calgary that its confidential information and patented technology was being used in MetaCure's commercial products.

II. Jurisdiction and Venue

15. The Parties agreed that the Agreement and its terms "shall be governed by and construed in accordance with the laws of the State of California, the courts of which shall have exclusive jurisdiction over the parties and subject matter." *Id.* ¶ 10.

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as the Parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

17. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(3).

III. Intradistrict Assignment

18. There is no basis for assignment to a particular location or division of the Court pursuant to Civil L.R. 3-2(c).

COUNT I – BREACH OF CONTRACT

19. Innovate Calgary incorporates by reference the allegations contained in paragraphs 1-18, above.

20. Innovate Calgary has performed all of its obligations under the Agreement.

21. MetaCure breached the Agreement when it used Innovate Calgary's confidential information for purposes other than those set forth in the Agreement.

22. Innovate Calgary suffered damages as a direct and proximate result of MetaCure's breach of the Agreement.

1 WHEREFORE, Innovate Calgary respectfully requests that this Court order MetaCure to:

- 2 a) Pay Innovate Calgary for the actual damage that MetaCure has caused Innovate Calgary
3 in an amount to be determined at trial;
4
5 b) Pay Innovate Calgary prejudgment interest;
6
7 c) Cease any further unauthorized use of Innovate Calgary's confidential information; and
8
9 d) Pay Innovate Calgary its reasonable attorneys fees and costs.

10 Dated: June 19, 2014

/s/ George C. Summerfield

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Attorneys for Plaintiff

*Innovate Calgary, f/k/a University Technologies
International Inc.*

DEMAND FOR JURY TRIAL

Innovate Calgary demands a trial by jury on all issues triable by jury.

Dated: June 19, 2014

/s/ George C. Summerfield

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